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**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

MOISES VILLALOBOS,

Plaintiff,

vs.

TONY'S SMOKE SHOP AND MARKET  
INC; KEITH METTER; and DOES 1 to  
10,

Defendants.

**Case No.:**

COMPLAINT FOR INJUNCTIVE  
RELIEF AND DAMAGES FOR DENIAL  
OF CIVIL RIGHTS OF A DISABLED  
PERSON IN VIOLATIONS OF

1. AMERICANS WITH DISABILITIES  
ACT, 42 U.S.C. §12131 et seq.;

2. CALIFORNIA'S UNRUH CIVIL  
RIGHTS ACT;

3. CALIFORNIA'S DISABLED  
PERSONS ACT;

4. CALIFORNIA HEALTH & SAFETY  
CODE;

5. NEGLIGENCE

Plaintiff MOISES VILLALOBOS ("Plaintiff") complains of Defendants TONY'S  
SMOKE SHOP AND MARKET INC; KEITH METTER; and DOES 1 to 10  
("Defendants") and alleges as follows:

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**PARTIES**

1  
2 1. Plaintiff is a California resident with a physical disability. Plaintiff is  
3 paraplegic, and is substantially limited in his ability to walk. Plaintiff requires the use of a  
4 wheelchair at all times when traveling in public.

5 2. Defendants are, or were at the time of the incident, the real property owners,  
6 business operators, lessors and/or lessees of the real property for a smoke shop  
7 (“Business”) located at or about 12244 Pearblossom Hwy., Pearblossom, California.

8 3. The true names and capacities, whether individual, corporate, associate or  
9 otherwise of Defendant DOES 1 through 10, and each of them, are unknown to Plaintiff,  
10 who therefore sues said Defendants by such fictitious names. Plaintiff will ask leave of  
11 Court to amend this Complaint when the true names and capacities have been  
12 ascertained. Plaintiff is informed and believes, and, based thereon, alleges that each such  
13 fictitiously named Defendants are responsible in some manner, and therefore, liable to  
14 Plaintiff for the acts herein alleged.

15 4. Plaintiff is informed and believes, and thereon alleges that, at all relevant  
16 times, each of the Defendants was the agent, employee, or alter-ego of each of the other  
17 Defendants, and/or was acting in concert with each of the other Defendants, and in doing  
18 the things alleged herein was acting with the knowledge and consent of the other  
19 Defendants and within the course and scope of such agency or employment relationship.

20 5. Whenever and wherever reference is made in this Complaint to any act or  
21 failure to act by a defendant or Defendants, such allegations and references shall also be  
22 deemed to mean the acts and failures to act of each Defendant acting individually, jointly  
23 and severally.

24 **JURISDICTION AND VENUE**

25 6. The Court has jurisdiction of this action pursuant to 28 USC §§ 1331 and  
26 1343 for violation of the Americans with Disabilities Act of 1990, (42 USC §12101, *et*  
27 *seq.*).  
28



1 c. Defendants failed to comply with the federal and state standards for  
2 the parking space designated for persons with disabilities. Defendants  
3 failed to paint the ground as required.

4 d. Defendants failed to comply with the federal and state standards for  
5 the parking space designated for persons with disabilities. Defendants  
6 failed to mark the space with the International Symbol of  
7 Accessibility.

8 e. Defendants failed to comply with the federal and state standards for  
9 the parking space designated for persons with disabilities. Defendants  
10 failed to provide an access aisle with level surface slope.

11 14. These barriers and conditions denied Plaintiff the full and equal access to the  
12 Business and caused Plaintiff difficulty and frustration. Plaintiff wishes to return and  
13 patronize the Business; however, Plaintiff is deterred from visiting the Business because  
14 his knowledge of these violations prevents him from returning until the barriers are  
15 removed.

16 15. Based on the violations, Plaintiff alleges, on information and belief, that  
17 there are additional barriers to accessibility at the Business after further site inspection.  
18 Plaintiff seeks to have all barriers related to his disability remedied. *See Doran v. 7-*  
19 *Eleven, Inc.* 524 F.3d 1034 (9<sup>th</sup> Cir. 2008).

20 16. In addition, Plaintiff alleges, on information and belief, that Defendants  
21 knew that particular barriers render the Business inaccessible, violate state and federal  
22 law, and interfere with access for the physically disabled.

23 17. At all relevant times, Defendants had and still have control and dominion  
24 over the conditions at this location and had and still have the financial resources to  
25 remove these barriers without much difficulty or expenses to make the Business  
26 accessible to the physically disabled in compliance with ADDAG and Title 24  
27 regulations. Defendants have not removed such barriers and have not modified the  
28 Business to conform to accessibility regulations.

**FIRST CAUSE OF ACTION**

**VIOLATION OF THE AMERICANS WITH DISABILITIES ACT OF 1990**

18. Plaintiff incorporates by reference each of the allegations in all prior paragraphs in this complaint.

19. Under the Americans with Disabilities Act of 1990 (“ADA”), no individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns, leases, or leases to, or operates a place of public accommodation. *See* 42 U.S.C. § 12182(a).

20. Discrimination, *inter alia*, includes:

- a. A failure to make reasonable modification in policies, practices, or procedures, when such modifications are necessary to afford such goods, services, facilities, privileges, advantages, or accommodations to individuals with disabilities, unless the entity can demonstrate that making such modifications would fundamentally alter the nature of such goods, services, facilities, privileges, advantages, or accommodations. 42 U.S.C. § 12182(b)(2)(A)(ii).
- b. A failure to take such steps as may be necessary to ensure that no individual with a disability is excluded, denied services, segregated or otherwise treated differently than other individuals because of the absence of auxiliary aids and services, unless the entity can demonstrate that taking such steps would fundamentally alter the nature of the good, service, facility, privilege, advantage, or accommodation being offered or would result in an undue burden. 42 U.S.C. § 12182(b)(2)(A)(iii).
- c. A failure to remove architectural barriers, and communication barriers that are structural in nature, in existing facilities, and transportation barriers in existing vehicles and rail passenger cars used by an

1 establishment for transporting individuals (not including barriers that  
2 can only be removed through the retrofitting of vehicles or rail  
3 passenger cars by the installation of a hydraulic or other lift), where  
4 such removal is readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv).

- 5 d. A failure to make alterations in such a manner that, to the maximum  
6 extent feasible, the altered portions of the facility are readily  
7 accessible to and usable by individuals with disabilities, including  
8 individuals who use wheelchairs or to ensure that, to the maximum  
9 extent feasible, the path of travel to the altered area and the  
10 bathrooms, telephones, and drinking fountains serving the altered  
11 area, are readily accessible to and usable by individuals with  
12 disabilities where such alterations to the path or travel or the  
13 bathrooms, telephones, and drinking fountains serving the altered area  
14 are not disproportionate to the overall alterations in terms of cost and  
15 scope. 42 U.S.C. § 12183(a)(2).

16 21. Where parking spaces are provided, accessible parking spaces shall be  
17 provided. 1991 ADA Standards § 4.1.2(5); 2010 ADA Standards § 208. One in every  
18 eight accessible spaces, but not less than one, shall be served by an access aisle 96 in  
19 (2440 mm) wide minimum and shall be designated “van accessible.” 1991 ADA  
20 Standards § 4.1.2(5)(b). For every six or fraction of six parking spaces, at least one shall  
21 be a van accessible parking space. 2010 ADA Standards § 208.2.4.

22 22. Under the ADA, the method and color of marking are to be addressed by  
23 State or local laws or regulations. See 36 C.F.R., Part 1191. Under the California  
24 Building Code (“CBC”), the parking space identification signs shall include the  
25 International Symbol of Accessibility. Parking identification signs shall be reflectorized  
26 with a minimum area of 70 square inches. Additional language or an additional sign  
27 below the International Symbol of Accessibility shall state “Minimum Fine \$250.” A  
28 parking space identification sign shall be permanently posted immediately adjacent and

1 visible from each parking space, shall be located with its centerline a maximum of 12  
2 inches from the centerline of the parking space and may be posted on a wall at the  
3 interior end of the parking space. See CBC § 11B-502.6, et seq.

4 23. Moreover, an additional sign shall be posted either in a conspicuous place at  
5 each entrance to an off-street parking facility or immediately adjacent to on-site  
6 accessible parking and visible from each parking space. The additional sign shall not be  
7 less than 17 inches wide by 22 inches high. The additional sign shall clearly state in  
8 letters with a minimum height of 1 inch the following: "Unauthorized vehicles parked in  
9 designated accessible spaces not displaying distinguishing placards or special license  
10 plates issued for persons with disabilities will be towed always at the owner's expense..."  
11 See CBC § 11B-502.8, et seq.

12 24. Here, Defendants failed to provide the signs stating, "Minimum Fine \$250"  
13 and "Van Accessible." Moreover, Defendants failed to provide the additional sign with  
14 the specific language stating "Unauthorized vehicles parked in designated accessible  
15 spaces not displaying distinguishing placards or special license plates issued for persons  
16 with disabilities will be towed always at the owner's expense..."

17 25. For the parking spaces, access aisles shall be marked with a blue painted  
18 borderline around their perimeter. The area within the blue borderlines shall be marked  
19 with hatched lines a maximum of 36 inches (914 mm) on center in a color contrasting  
20 with that of the aisle surface, preferably blue or white. The words "NO PARKING" shall  
21 be painted on the surface within each access aisle in white letters a minimum of 12 inches  
22 (305 mm) in height and located to be visible from the adjacent vehicular way. CBC §  
23 11B-502.3.3.

24 26. Here, Defendants failed to provide a proper access aisle as there were no  
25 "NO PARKING" markings and blue hatched lines painted on the parking surface.  
26 Moreover, Defendants failed to provide the access aisle with the minimum width of 96  
27 inches.



1           27. The surface of each accessible car and van space shall have surface  
2 identification complying with either of the following options: The outline of a profile  
3 view of a wheelchair with occupant in white on a blue background a minimum 36” wide  
4 by 36” high (914 mm x 914 mm). The centerline of the profile view shall be a maximum  
5 of 6 inches (152 mm) from the centerline of the parking space, its sides parallel to the  
6 length of the parking space and its lower side or corner aligned with the end of the  
7 parking space length or by outlining or painting the parking space in blue and outlining  
8 on the ground in white or a suitable contrasting color a profile view of a wheel chair with  
9 occupant. See CBC § 11B-502.6.4, et seq.

10           28. Here, Defendants failed to paint the International Symbol of Accessibility on  
11 the surface as required.

12           29. Under the 1991 Standards, parking spaces and access aisles must be level  
13 with surface slopes not exceeding 1:50 (2%) in all directions. 1991 Standards § 4.6.2.  
14 Accessible parking spaces shall be at least 96 in (2440 mm) wide. Parking access aisles  
15 shall be part of an accessible route to the building or facility entrance and shall comply  
16 with 4.3. Two accessible parking spaces may share a common access aisle. Parked  
17 vehicle overhangs shall not reduce the clear width of an accessible route. Parking spaces  
18 and access aisles shall be level with surface slopes not exceeding 1:50 (2%) in all  
19 directions. 1991 Standards § 4.6.3.

20           30. Here, the access aisle is not level with the parking spaces. Under the 2010  
21 Standards, access aisles shall be at the same level as the parking spaces they serve.  
22 Changes in level are not permitted. 2010 Standards § 502.4. “Access aisles are required  
23 to be nearly level in all directions to provide a surface for transfer to and from vehicles.”  
24 2010 Standards § 502.4 Advisory. Id. No more than a 1:48 slope is permitted.

25           31. A public accommodation shall maintain in operable working condition those  
26 features of facilities and equipment that are required to be readily accessible to and usable  
27 by persons with disabilities by the Act or this part. 28 C.F.R. 35.211(a).



1           32. By failing to maintain the facility to be readily accessible and usable by  
2 Plaintiff, Defendants are in violation of Plaintiff's rights under the ADA and its related  
3 regulations.

4           33. The Business has denied and continues to deny full and equal access to  
5 Plaintiff and to other people with disabilities. Plaintiff has been and will continue to be  
6 discriminated against due to the lack of accessible facilities, and therefore, seeks  
7 injunctive relief to alter facilities to make such facilities readily accessible to and usable  
8 by individuals with disabilities.

9                                   **SECOND CAUSE OF ACTION**

10                           **VIOLATION OF THE UNRUH CIVIL RIGHTS ACT**

11           34. Plaintiff incorporates by reference each of the allegations in all prior  
12 paragraphs in this complaint.

13           35. California Civil Code § 51 states, "All persons within the jurisdiction of this  
14 state are free and equal, and no matter what their sex, race, color, religion, ancestry,  
15 national origin, disability, medical condition, genetic information, marital status, sexual  
16 orientation, citizenship, primary language, or immigration status are entitled to the full  
17 and equal accommodations, advantages, facilities, privileges, or services in all business  
18 establishments of every kind whatsoever."

19           36. California Civil Code § 52 states, "Whoever denies, aids or incites a denial,  
20 or make any discrimination or distinction contrary to Section 51, 51.5, or 51.6, is liable  
21 for each and every offense for the actual damages, and any amount that may be  
22 determined by a jury, or a court sitting without a jury, up to a maximum of three times the  
23 amount of actual damage but in no case less than four thousand dollars (\$4,000) and any  
24 attorney's fees that may be determined by the court in addition thereto, suffered by any  
25 person denied the rights provided in Section 51, 51.5, or 51.6.

26           37. California Civil Code § 51(f) specifies, "a violation of the right of any  
27 individual under federal Americans with Disabilities Act of 1990 (Public Law 101-336)  
28 shall also constitute a violation of this section."

38. The actions and omissions of Defendants alleged herein constitute a denial of full and equal accommodation, advantages, facilities, privileges, or services by physically disabled persons within the meaning of California Civil Code §§ 51 and 52. Defendants have discriminated against Plaintiff in violation of California Civil Code §§ 51 and 52.

39. The violations of the Unruh Civil Rights Act caused Plaintiff to experience difficulty, discomfort, or embarrassment. The Defendants are also liable for statutory damages as specified in California Civil Code §55.56(a)-(c).

### **THIRD CAUSE OF ACTION**

## **VIOLATION OF CALIFORNIA DISABLED PERSONS ACT**

40. Plaintiff incorporates by reference each of the allegations in all prior paragraphs in this complaint.

41. California Civil Code § 54.1(a) states, “Individuals with disabilities shall be entitled to full and equal access, as other members of the general public, to accommodations, advantages, facilities, medical facilities, including hospitals, clinics, and physicians’ offices, and privileges of all common carriers, airplanes, motor vehicles, railroad trains, motorbuses, streetcars, boats, or any other public conveyances or modes of transportation (whether private, public, franchised, licensed, contracted, or otherwise provided), telephone facilities, adoption agencies, private schools, hotels, loading places, places of public accommodations, amusement, or resort, and other places in which the general public is invited, subject only to the conditions and limitations established by law, or state or federal regulation, and applicable alike to all persons.

42. California Civil Code § 54.3(a) states, “Any person or persons, firm or corporation who denies or interferes with admittance to or enjoyment of public facilities as specified in Sections 54 and 54.1 or otherwise interferes with the rights of an individual with a disability under Sections 54, 54.1 and 54.2 is liable for each offense for the actual damages, and any amount as may be determined by a jury, or a court sitting without a jury, up to a maximum of three times the amount of actual damages but in no

1 case less than one thousand dollars (\$1,000) and any attorney's fees that may be  
 2 determined by the court in addition thereto, suffered by any person denied the rights  
 3 provided in Section 54, 54.1, and 54.2.

4 43. California Civil Code § 54(d) specifies, "a violation of the right of an  
 5 individual under Americans with Disabilities Act of 1990 (Public Law 101-336) also  
 6 constitute a violation of this section, and nothing in this section shall be construed to limit  
 7 the access of any person in violation of that act.

8 44. The actions and omissions of Defendants alleged herein constitute a denial  
 9 of full and equal accommodation, advantages, and facilities by physically disabled  
 10 persons within the meaning of California Civil Code § 54. Defendants have  
 11 discriminated against Plaintiff in violation of California Civil Code § 54.

12 45. The violations of the California Disabled Persons Act caused Plaintiff to  
 13 experience difficulty, discomfort, and embarrassment. The Defendants are also liable for  
 14 statutory damages as specified in California Civil Code §55.56(a)-(c).

#### 15 **FOURTH CAUSE OF ACTION**

##### 16 **CALIFORNIA HEALTH & SAFETY CODE § 19955, et seq.**

17 46. Plaintiff incorporates by reference each of the allegations in all prior  
 18 paragraphs in this complaint.

19 47. Plaintiff and other similar physically disabled persons who require the use of  
 20 a wheelchair are unable to use public facilities on a "full and equal" basis unless each  
 21 such facility is in compliance with the provisions of California Health & Safety Code §  
 22 19955 et seq. Plaintiff is a member of the public whose rights are protected by the  
 23 provisions of California Health & Safety Code § 19955 et seq.

24 48. The purpose of California Health & Safety Code § 1995 et seq. is to ensure  
 25 that public accommodations or facilities constructed in this state with private funds  
 26 adhere to the provisions of Chapter 7 (commencing with Section 4450) of Division 5 of  
 27 Title 1 of the Government Code. The code relating to such public accommodations also  
 28 require that "when sanitary facilities are made available for the public, clients, or

1 employees in these stations, centers, or buildings, they shall be made available for  
2 persons with disabilities.

3 49. Title II of the ADA holds as a “general rule” that no individual shall be  
4 discriminated against on the basis of disability in the full and equal enjoyment of goods  
5 (or use), services, facilities, privileges, and accommodations offered by any person who  
6 owns, operates, or leases a place of public accommodation. 42 U.S.C. § 12182(a).  
7 Further, each and every violation of the ADA also constitutes a separate and distinct  
8 violation of California Civil Code §§ 54(c) and 54.1(d), thus independently justifying an  
9 award of damages and injunctive relief pursuant to California law, including but not  
10 limited to Civil Code § 54.3 and Business and Professions Code § 17200, et seq.

11 **FIFTH CAUSE OF ACTION**

12 **NEGLIGENCE**

13 50. Plaintiff incorporates by reference each of the allegations in all prior  
14 paragraphs in this complaint.

15 51. Defendants have a general duty and a duty under the ADA, Unruh Civil  
16 Rights Act and California Disabled Persons Act to provide safe and accessible facilities  
17 to the Plaintiff.

18 52. Defendants breached their duty of care by violating the provisions of ADA,  
19 Unruh Civil Rights Act and California Disabled Persons Act.

20 53. As a direct and proximate result of Defendants’ negligent conduct, Plaintiff  
21 has suffered damages.

22 **PRAYER FOR RELIEF**

23 WHEREFORE, Plaintiff respectfully prays for relief and judgment against  
24 Defendants as follows:

25 1. For preliminary and permanent injunction directing Defendants to comply  
26 with the Americans with Disability Act and the Unruh Civil Rights Act;

27 2. Award of all appropriate damages, including but not limited to statutory  
28 damages, general damages and treble damages in amounts, according to proof;

1           3.     Award of all reasonable restitution for Defendants' unfair competition  
2 practices;

3           4.     Reasonable attorney's fees, litigation expenses, and costs of suit in this  
4 action;

5           5.     Prejudgment interest pursuant to California Civil Code § 3291; and

6           6.     Such other and further relief as the Court deems just and proper.

7                               **DEMAND FOR TRIAL BY JURY**

8           Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff hereby  
9 demands a trial by jury on all issues so triable.

10  
11 Dated: September 20, 2024

SO. CAL. EQUAL ACCESS GROUP

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14 By: /s/ Jason J. Kim  
15 Jason J. Kim, Esq.  
16 Attorneys for Plaintiff  
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